REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicants thank the Examiner for carefully considering this application.

Disposition of Claims

Claims 8-16 and 24-30 are currently pending in this application. A preliminary amendment received on December 12, 2006 acknowledged that claims 1-7, 17-23 and 31-37 as being canceled. Applicant has previously canceled claims 2, 13, 14, 25, 27, and 28. In this response, Applicant has amended claims 8, 10, 11 and 24.

Claim Rejections

Claims 8, 10, 11, 15, 16, 24, 26 29 and 30 are rejected under 35 U.S.C. 112 as failing to comply with the enablement requirements. Applicant has amended the claim to include a step that calculates energy usage for an end-user for a particular application. The support for this calculating step is found in Figure 3, items 127 and 129 and in paragraph [0044].

Claim Rejections

Claims 8, 10, 11, 15, 16, 24, 26 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papalia et al. (U.S. patent 6,255,805) in view of Neirlich et al. Applicant has amended Applicant has amended claims 8 and 24 to include the limitation of calculating energy usage for the energy alternatives for a particular application by an end-user.

The present invention enables a facility (home, business or industrial site) to optimize the consumption of energy in that facility. In this invention, the power companies that supply energy provide information to its client facilities on the cost and availability of energy from that company on a real-time basis. Each client facility would have a power accounting server. These servers store this and process this information to predict when the rates for using the energy will be the least expensive for a particular task or to operate a particular appliance. A homeowner (client facility) for example can

program appliances such as a dishwasher or laundry machine to turn on when the cost of energy is below a particular threshold price. The present invention has the capability to receive characteristics about a particular appliance, generate a list of energy consumption options for that particular product at a particular time period and select and implement the most efficient energy supply option. This invention can also enable a client facility that generates energy to efficiently use the generated energy and sell any excess energy to another end user or to other energy consumers.

Papalia describes a power circuit that is capable of effecting a plurality of source sharing configurations, including: a fist configuration in which the local load is fully powered by the power grid; a second configuration in which the local load is fully powered by the local generator; and a third configuration in which the local load is partially powered by the power grid and partially powered by the local generator. The data port is capable of receiving data from an external source. The controller is programmed to execute the following operations: receive data from the data port; determine a preferred source sharing configuration from the plurality of source sharing configurations, based on data received from the data port; and instruct the power circuit to effect the preferred source sharing configuration.

The examiner asserts that Papalia describes a step of selling any excess generated energy to other end-users. The examiner asserts that Papalia teaches an open market environment wherein excess of generated energy is sold back to the grid.

The present invention describes a system in which an end-user facility can use energy from that facility, from a grid or from another end-user that generates energy. Papalia, describes a system wherein an end-user facility can receive energy from a grid or can generate energy at the end-user facility. Papalia does not mention or discuss alternative end-user facilities supplying energy to other end-user facilities. The configurations described by Papalia only included the grid and the end-user facility as the energy sources. In column 2, lines 42-54, the generator 142 cited by the examiner is the generator for the end-user facility. Papalia does not mention any other energy sources than the grid and the end-user. Therefore, any discussion in Papalia relates to the end-user facility and the grid. In Papalia system there are no other end-user facilities that are

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supplying energy. Therefore, there are no other end-users to buy energy from the initial end-user. Further, Papalia continues to describe the selling of energy as buying back energy. This reference is to the energy grid (provider) buying energy from the end-user facility. The market referred to is not an open market that includes end-user facilities. This market is among utility companies.

Neirlich describes a system that monitors, controls and manages energy distribution or use for Energy Service Providers and end-users. This system includes a publicly or privately accessible distributed network, a network access device, and a management device. The network access device communicates with the management device through the distributed network to control loads at a remote location. The method of monitoring and controlling energy distribution receives data at an on-line Site, processes an application program that evaluates load and market supply data, and initiates power curtailment requests or power curtailment events.

Neirlich incorporates demand side bidding to achieve a sustainable supply of electric power and to create competitive markets. Demand side bidding offsets the need for increased generation through demand reduction. The system treats an offer from an end-user to reduce demand as an offer to sell generated electricity. The energy not consumed by an end-user is considered "generated" as it is available to meet other demand. There can be contractual incentives for end-users to switch dispensable loads off-line during periods of high demand. End-users, for example, might receive payments for "generating" electricity they do not consume. In practice, such a system has not met expectations as it requires an accessible system that integrates open market price exchanges with advanced technology.

In Neirlich's system, energy supply providers include energy marketers, grid owners, utilities, merchant plant proprietors, cooperatives, and municipalities. The energy available from end-users is not actual generated energy, but conserved energy of the end-user. Many of the steps in the present invention such as generating energy at the end-user facility and selling the excess generated energy are not described in either reference. Neirlich incorporates a complex system in which end-users are given

incentives to conserve energy. Some of the incentives include money. However, this system is not negotiated by the end-user.

However, contrary to the examiner's assertions, Neirlich does not provide for selling any excess generated energy to other end-users or to energy suppliers by placing information about available energy in a location accessible to potential energy purchasers.

To establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings (MPEP 706.02(j)). Applicant submits that the Examiner has failed to present a prima facie case of obviousness. As indicated above, Papalia, the primary reference, fails to teach or teaches away from (inter alia) selling any excess energy generated by the end-user site to other end-users or to energy suppliers by placing information about available energy in a location accessible to potential energy purchasers; negotiating the price and quantity of the energy with a potential energy purchaser; and consummating the transaction with the potential energy purchaser. Neirlich fails to provide the deficiencies of one end-user selling excess generated energy to other end-users. Neirlich discloses a system of characterizing unused energy as generated energy. Thus, Neirlich fails to teach the missing limitations.

Moreover, neither cited reference describes a system of negotiating energy prices between an end-user generating energy and an energy purchaser. In Papalia, energy is sold back to the grid (energy company). These prices are based on prices that energy companies pay. This is not an open market in that it does not contemplate end-users as energy companies. In addition, utility prices in many instances are regulated. In fact, Papalia mentions that the energy sell back system may be restricted or not available to some end-user energy suppliers. There are no negotiation of energy prices. Further, Neirlich does not complete any price negotiations.

Moreover, there is no motivation to combine Papalia with Neirlich, and such a combination would fail to provide the missing limitations. Thus, Papalia alone or in combination with Neirlich fails to support a finding of obviousness.

For at least these reasons, Applicant submits that the Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103. Applicant, therefore, respectfully requests withdrawal of the rejection of the claims.

In this application, the examiner issued a Notice of Abandonment. In this application, a final rejection was sent out on February 11, 2008. However, this letter was not delivered to the Applicant and was returned to the patent office. The file indicates the return of this letter. The examiner did call the attorney of record about this matter. The attorney immediately submitted a change of address form so that the letter could be sent to him. In addition, the attorney of record retrieved the letter for PAIR and began to formulate this response. However, the examiner proceeded to issue this Notice of Abandonment stating that the applicant failed to respond to the letter dated February 11, 2008. The examiner knew that the applicant did not receive the letter. Applicant asserts that this Notice of Abandonment is not warranted. This letter was not delivered to the Applicant thus the Applicant did not have an opportunity to respond to it. Applicant requests that this Notice of Allowance be withdrawn and that this applicant be revived.

In view of the above, Applicant respectfully submits that none of the art of record (alone or in combination) teaches, discloses or even suggests the invention as recited in each of Applicant's claims. Applicant further submits that all of the pending claims are in condition for allowance. Withdrawal of the rejections and passage to issuance is respectfully requested. Applicant believes this reply to be fully responsive to all outstanding issues and place this application in condition for allowance. If this belief is incorrect, or other issues arise, do not hesitate to contact the undersigned at the below listed telephone number.

Respectfully Submitted,

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